the text-books and cases are not without *dicta* in its support (1 Bish. New Crim. Law, § 869; *Com.* v. *Crum*, 58 Pa. 9; *Gilleland* v. *State*, 44 Tex. 356).

The following passage shows that some such idea was present to the minds of the old lawyers, and is of interest in this connection: "But if one were threatened that if he should come to such a market, or into such a place, he should there be beaten, in that case he could not assemble persons to help him go there in personal safety, for he need not go there, and he may have a remedy by surety of the peace" (Anon. Y. B. 21 Hen. VII. 39, pl. 50).

COMPENSATION FOR IMPROVING ANOTHER'S PROPERTY WITHOUT REQUEST. — The Supreme Court of North Carolina, in *Gaskins* v. *Davis*, 20 S. E. R. 188, decides that one who cuts logs on another's land by mistake cannot, when they are retaken by the lawful owner, claim compensation for their increase in value caused by his having transported them to market. The action was by the lawful owner for damages for cutting other logs, and defendant sought to counter-claim.

Had the mistaken wrongdoer sufficiently changed the nature or enhanced the value of the logs to acquire title to them by accession, the measure of damages would have been limited to the value of the logs at the time of the conversion. The same rule would have applied in many jurisdictions if there had been no accession, and the real owner had brought trover for the logs instead of retaking them. In both cases defendant would, in effect, have been compensated for the increase in value which his labor had brought about. It seems unfortunate that in the single case where there has been no accession, and the logs are retaken by the owner, the right to compensation should be denied. In *Isle Royal Mining Co.* v. *Hertin*, 37 Mich. 332, a similar log case, the claim was denied because to allow it would be to offer a "premium to heedlessness and blunders." The rule of damages in accession and trover seems equally lenient to blunderers, and has not been found disastrous in practice.

It is rather difficult to distinguish the cases on principle from those in which a right to compensation in equity has been allowed for improvements to land made under a mistaken belief of ownership (*Albea* v. *Griffin*, 2 Dev. & B. Eq. 9 (N. C.); Rodman, J., in *Potter* v. *Mardre*, 74 N. C. 40). A decision to much the same effect was made in *Bright* v. *Boyd*, 1 Story, 478; 2 Story, 608. And see Keener, Quasi-Contracts, 385, 386.

The analogy was noticed by the court in the principal case.

COMPARATIVE NEGLIGENCE. — The REVIEW has received a letter from Mr. E. Parmalee Prentice, of Chicago, kindly calling attention to the fact that in the note on Comparative Negligence, in the January number, the future of that doctrine was suggested in a somewhat more cautious way than the situation requires. For this view he cites *Railway Co.* v. *Hession*, 37 N. E. R. 905–907; *City of Lanark* v. *Dougherty*, 38 N. E. R. 892; *Iron Co.* v. *Martin*, 115 Ill. 358; *Wenona Coal Co.* v. *Holmquist*, 38 N. E. R. 946, and adds that ever since the Martin case that rule has been regarded by the Chicago Bar as discredited. Whatever weight may be given to the earlier cases, the opinion of the local bar on this question,

and the cases of *Lanark* v. *Dougherty*, and *Coal Co.* v. *Holmquist* (above cited), reported since the writing of the note on this subject, are undoubtedly, as Mr. Prentice suggests, to be regarded as rendering the doctrine of Comparative Negligence obsolete and no longer law.

RICE *v.* D'ARVILLE AND JOHNSON *v.* GIRDWOOD AFFIRMED. — *Rice* v. *D'Arville*, 8 HARVARD LAW REVIEW, 172, has been affirmed by the Supreme Court of Massachusetts, which seems explicitly to deny, as Mr. Justice Holmes did below, the English case of *Lumley* v. *Wagner*, 1 De G. M. & G. 604. But the main ground of the decision, so far as the incomplete report at hand shows, is that the plaintiff was unable to do his part of the affirmative contract, and therefore not entitled to equitable relief in the negative branch. The decision above is then by no means so far-reaching as the principle laid down below.

Johnson v. *Girdwood*, 28 N. Y. Suppl. 151, commented on 8 HARVARD LAW REVIEW, 222 ("Can one cheated into pleading guilty maintain an action for it?"), had been affirmed in the Court of Appeal, without opinion or reasons for the decision, on October 9. It is to be regretted that the commendable zeal of that court to keep up with its docket should deprive the profession of discussion on a case of the first impression with such novel facts and raising so interesting a question.

RECENT CASES.

AGENCY — EMPLOYER'S STATUTORY LIABILITY — WAYS, WORKS, AND MACHINERY. — *Held*, that loaded freight cars received by a railroad company from and belonging to another road, are part of "the ways, works, and machinery" of the railroad, within the meaning of a statute similar to the English Employer's Liability Act. *Bowers* v. *Connecticut River R. R. Co.*, 38 N. E. Rep. 508 (Mass.).

While this case turns upon the construction of a statute, yet it is interesting because of the prevalence of statutes of this kind. A different construction was given the statute on facts which are hardly distinguishable in *Coffee* v. *R. R. Co.*, 155 Mass. 21, where it was held that empty cars belonging to another company and being returned to that company by the defendant, were not part of "the ways, works, and machinery" of the defendant. The point is now settled in Massachusetts in accordance with the principal case by St. 1893, c. 359, which expressly provides that any car in the use of, or in the possession of a railroad company, shall be considered a part of its ways, works and machinery.

AGENCY — PAROL AUTHORITY. — A Statute of Illinois provides that city councils should allow street railroads to be built only when the land-owners petition for such railroad. There was a petition in this case and the city council granted permission to the defendant railway company to build a line. Plaintiff now seeks to enjoin the building of it on the ground that the names of some of the land-owners were signed by agents, as appears on the face of the petition, and that the authority does not appear. The theory was that the authority had to be in writing. *Held*, a parol authority to sign was good, and injunction will not be granted. *Tibbets* v. *West and South Towns St. Ry. Co.*, 38 N. E. Rep. 664 (Ill.).

In Illinois an authority to sell or lease lands must be in writing, and the argument of the counsel for plaintiff was that practically land was sold here so the petition could be signed only by the owner, or an agent authorized by writing. The court answered that "there was nothing in the statute changing the common-law rule by which an agent may sign the name of his principal to a writing, under an authority not in writing." They said the fee of the street belonged to the city of Chicago, and that the petitions did not operate as a grant anyway.

AGENCY — RATIFICATION BY PRINCIPAL NON-EXISTING AT DATE OF CONTRACT. — One of the promoters of defendant corporation contracted with plaintiff on behalf of